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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,438	01/07/2002	Jose Luis Martinez Carballido	217014US30	4694
22850	7590	03/18/2004		
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER WEINSTEIN, STEVEN L	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 03/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

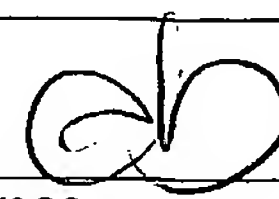
10/036,438

Applicant(s)MARTINEZ CARBALLIDO, JOSE
LUIS**Examiner**

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>4/24/02</u> | 6) <input type="checkbox"/> Other: ____ |

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5 and 9-11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Yoshimura et al (Japan 9-226776) or De Woolfson (4,492,295).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Yoshimura et al (Japan '776) or De Woolfson ('295) both further in view of applicant's admission of the prior art.

Claims 4, 7 and 8 differ from Yoshimura et al and De Woolfson in reciting that the coating includes a binder (claim 4) and the particular fluorescent pigment employed. Applicants are clearly not the inventor of adding binding agents or the particular fluorescent pigment. For example, applicant's admission of the prior art acknowledges that the additives are known and the pigments are known to be fluorescent (see page 3 of applicant's specification. To modify Yoshimura et al and De Woolfson and add a binder and employ a conventional fluorescent pigment for its art recognized and applicant's intended function would therefore have been obvious.

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Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Yoshimura et al (Japan '776) or De Woolfson ('295), both further in view of Carrell (3,628,271).

Claim 6 appears to attempt to recite that the fluorescent coating is on a closure which closure is either a crown closure or screw closure. Claim 6 is dependent on claim 1. Claim 1 recites a container or closure containing a fluorescent coating thereon. Thus, for purposes of claim analysis for 35 USC102 or 35USC103, either a container or closure is required to be shown to sustain a proper rejection. Similarly, claim 6 recites no more than a container or a crown closure or a screw closure. Thus, although it would still appear that claim 6 recites the elements in the alternative and thus would still be rejected under Yoshimura et al or De Woolfson alone, the examiner will construe claim 6 to read the alternative caps with the fluorescent coating thereon. Carrell et al is relied on to teach it was notoriously well known to employ a fluorescent coating on a closure and a crown closure. To modify Yoshimura et al or De Woolfson and employ the coating on a closure would have been obvious and the particular closure would have been an obvious function of the conventional packaging structure employed.

Claims 1-3, 6 and 9-11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Carrell et al (3,628,271).

Claims 4 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carrell et al ('271) in view of applicant's admission of the prior art which is relied on as above.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Carrell et al ('271) in view of Yoshimura et al (Japan '776) and De Woolfson ('295).

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Claim 5 differs from Carrell in reciting a can. As evidenced by Yoshimura et al and De Woolfson, it is well established to provide fluorescent coatings on cans and to substitute one conventional receptacle for another conventional receptacle, would therefor have been obvious.


The remainder of the references cited on the USPTO892 form are cited as pertinent art including other examples of fluorescent-coated receptacles (e.g. Hughes et al (4,316,533), Barmore et al (6,297,508), and Richter et al (2,929,931).

Any inquiry concerning this communication from the examiner should be directed to Steven L. Weinstein whose telephone number is (571) 272-1410. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (571) 272-1201.

S. Weinstein/dh
March 8, 2004


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
3/12/04
Rem. 8A69